

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* PANG-CHIA LU, ROBERT M. SHEPPARD,  
DONALD J. BURNS, ROBERT A. MIGLIORINI,  
SAL J. PELLINGRA, KAREN ANN SHEPPARD and  
ROBERT GUTHRIE PEET

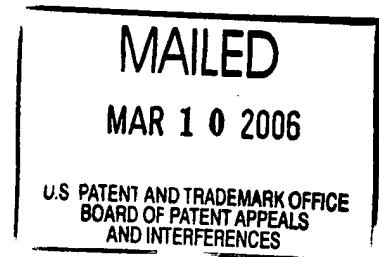
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Appeal No. 2006-0715  
Application 09/757,175

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ON BRIEF

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Before GARRIS, WALTZ, and FRANKLIN, *Administrative Patent Judges*.

WALTZ, *Administrative Patent Judge*.

**DECISION ON APPEAL**

This is a decision on an appeal from the primary examiner's final rejection of claims 1, 3 through 5, 29,<sup>1</sup> 31 through 36 and 38. The only other claims pending in this application are claims

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<sup>1</sup>We note that claim 29 is an improper dependent claim since it depends on previously canceled claim 2. Upon the return of this application to the jurisdiction of the examiner, the examiner and appellants should correct this claim dependency.

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8 through 27 and 37, which stand withdrawn from consideration by the examiner as directed to a non-elected invention (Brief, page 4). We have jurisdiction pursuant to 35 U.S.C. § 134.

According to appellants, the invention is directed to a multi-layered colored polymeric film comprising an opaque core layer and a first skin layer, where the opaque core layer comprises a thermoplastic material, the skin layer comprises a thermoplastic material with a coloring agent, and each layer of the film is substantially free of voids (Brief, page 6).

Independent claim 1 is illustrative of the invention and is reproduced below:

A multi-layered colored polymeric film comprising:  
(a) an opaque core layer comprising a thermoplastic material, said core layer having a first side and a second side; and  
(b) a first skin layer comprising a thermoplastic material with a coloring agent, wherein said first skin layer is adjacent to the first side of the core layer; wherein each layer of said film is substantially free of voids.

The examiner has relied upon the following references as evidence of obviousness:

Park et al. (Park)	4,758,462	Jul. 19, 1988
Wilkie et al. (Wilkie)	5,443,915	Aug. 22, 1995

The claims on appeal stand rejected under 35 U.S.C. § 103(a) as unpatentable over Park in view of Wilkie (Answer, page 3). We

reverse the rejection on appeal essentially for the reasons stated in the Brief, as well as those reasons set forth below.

#### **OPINION**

The examiner finds that Park discloses an opaque, biaxially oriented multilayer film comprising a thermoplastic polymer voided core layer and at least one void-free thermoplastic skin layer affixed to the surface of the core layer (Answer, page 3). The examiner also finds that Park teaches that by adding a light absorbent colored pigment to the non-expanded (void-free) skin, the opacity is increased, and these pigment particles may be added to the core only, to the skins only, or any combination (*id.*).

The examiner recognizes that Park lacks a teaching that the multilayered opaque film is "substantially void-free" in each layer, as required by claim 1 on appeal (*id.*). Therefore the examiner cites Wilkie, directed to an oriented multilayer film having a white-opaque layer, with the teaching that traditional opaque films have been produced using a cavitated (voided) core in order to achieve opacity but the voided core weakens the core layer (*id.*). The examiner also finds that Wilkie teaches oriented non-cavitated films of ethylene-propylene random copolymer with titanium dioxide dispersed therein are

advantageous (*id.*). From these findings, the examiner concludes that it would have been obvious to one of ordinary skill in this art at the time of appellants' invention "to substitute Park's voided opaque core layer with a layer of oriented, titanium dioxide opacified, substantially void-free polymer of a lower melting temperature" as taught by Wilkie, motivated by a desire to obtain an opaque multilayer film with improved mechanical strength (Answer, page 4).

We cannot sustain the examiner's rejection. As correctly argued by appellants' (Brief, page 11), the examiner has not presented any convincing reasoning why one of ordinary skill in this art would have substituted a *skin* layer of Wilkie for the core layer of Park. We note that the core layer of Wilkie is not opaque while the core layer of Park is opaque (Brief, page 12; see Park, col. 3, ll. 20-36; and Wilkie, col. 3, ll. 57-59).

The examiner argues that appellants' designation of one layer of a two-layer film as a "core layer" and the other layer as a "skin layer" is merely "semantic" because "physically their structural relation in a composite film is equivalent" (Answer, pages 5 and 6). We disagree. It is well settled that every limitation in a claim must be given effect in order to determine what subject matter that claim defines. See *In re Wilder*,

429 F.2d 447, 450, 166 USPQ 545, 548 (CCPA 1970). It is also well settled that the claimed words should be given the broadest reasonable meaning as commonly used *as they would be understood by one of ordinary skill in the art*, taking into account any definitions or enlightenment from the specification. See *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005); and *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). It was well understood in this art that a layer designated as the "core layer" was generally the thickest layer and gave the multilayered film its strength while the layer designated as the "skin layer" or "cold seal receptive layer" was a thin outer layer used to facilitate sealing of the film (see the admitted prior art on pages 1-6 of the specification; Park, col. 1, ll. 33-52; col. 2, ll. 58-64; col. 3, ll. 51-54; and col. 7, ll. 13-17; Wilkie, col. 1, ll. 41-47; col. 4, ll. 24-27; col. 4, ll. 64-66; col. 5, ll. 4-6; and col. 5, ll. 65-68). The examiner has failed to present any objective evidence that one of ordinary skill in the art of multilayer opaque film composites would have substituted a "skin layer" for a "core layer" with a reasonable expectation of success, including similar or improved properties.


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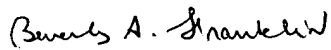
For the foregoing reasons, we determine that the examiner has not established a prima facie case of obviousness in view of the reference evidence of record. Therefore we reverse the rejection of claims 1, 3-5, 29, 31-36 and 38 under section 103(a) over Park in view of Wilkie.

The decision of the examiner is reversed.

**REVERSED**

  
BRADLEY R. GARRIS )  
Administrative Patent Judge )

  
THOMAS A. WALTZ )  
Administrative Patent Judge )

  
BEVERLY A. FRANKLIN )  
Administrative Patent Judge )

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